

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and the rulemaking authority granted by Penal Code (PC) Section 5058 in order to implement, interpret, and make specific PC Section 5054, proposes to adopt Section 3099 in the California Code of Regulations (CCR), Title 15 concerning Inmate Trust Account Interest.

PUBLIC HEARING:

Date and Time: February 24, 2009 – 9:00 a.m. to 12:00 p.m.
Place: Department of Corrections and Rehabilitation
Office of Training & Professional Development
10000 Goethe Road, Mt. Lassen Room, Suite 17
Sacramento, CA 95827
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close February 24, 2009, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**G. Long
Regulation and Policy Management Branch
Telephone (916) 341-7329**

Questions regarding the substance of the proposed regulatory action should be directed to:

**J. Parker
Office of Fiscal Services
Telephone (916) 255-1064**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

- This action adopts provisions governing Inmate Trust Account Interest that previously required the Secretary of the Department of Corrections and Rehabilitation (CDCR) to deposit any inmate funds in trust with the Treasurer and earned interest was to be deposited into the Inmate Welfare Fund for the benefit of all inmates. In 1996, several inmates filed suit against the CDCR (formerly the California Department of Corrections) alleging that the CDCR committed an unconstitutional taking and violated their equal protections rights by failing to pay interest on funds deposited in their Inmate Trust Accounts. In 2005 The CDCR agreed to provide interest under a new inmate trust system called the Inmate Restitution Banking and Canteen System. In early 2007, Assembly Bill Number 439 amended Section 5008 of the Penal Code, relating to prisoners, which requires the Secretary of the CDCR to deposit inmate trust account funds into interest bearing accounts and any interest accruing on these funds, less expenses incurred in the investment, would be deposited into qualifying individual inmate and parolee trust accounts. Beginning January 1, 2009, Interest earned on Inmate Trust Account deposits will be deposited into qualifying inmates' trust account.
- This action will ensure these provisions provide the Department with the authority and direction for handling the interest earned and requirements to distribute these funds on the established effective date.